

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 10,553
	)	
Appeal of	)	

INTRODUCTION

The petitioner applied to the board for an order expunging the record of a reported incident of child sexual abuse from the "registry" of the Department of Social and Rehabilitation Services (SRS). The issue is whether the report of abuse was "founded" within the meaning of the pertinent statutes and regulations.

FINDINGS OF FACT

This case is bizarre in that the petitioner, himself, first reported to SRS that J., a girl who at the time (August, 1989) was nine-years-old had been abused by two other adult males. Pursuant to the petitioner's report, SRS initiated an investigation of the petitioner's allegations.

The investigation was conducted by an experienced employee who has since left the state. The Department's records indicate that the investigator interviewed J.'s mother, who told SRS that J. had named three adults--including the petitioner (as well as the two individuals the petitioner had named)--as having molested her on separate occasions.

The investigator then interviewed J., herself. J. told the investigator that the petitioner had been living in the

same house with J., her mother, and J.'s younger half-siblings. One night while J.'s mother was out, the petitioner and the children were watching T.V. J. was lying on a bed adjoining a bed on which the petitioner was lying.

J. said the petitioner reached over, unbuckled her pants, and fondled her vagina with his hand. On the basis of this interview, SRS "founded" sexual abuse by the petitioner of J.<sup>1</sup>

The petitioner stated he did not learn of the founding until a few months ago.<sup>2</sup> At the hearing the petitioner (who appeared pro se) gave a rambling, disjointed, and inarticulate account of events both before and after the alleged incident. Most of the petitioner's testimony centered on the credibility, or lack thereof, of J.'s mother.

At the time of the incident, J.'s mother was married to, but separated from, the petitioner's brother. J. is her child from a previous marriage and is unrelated to the petitioner. Apparently, J.'s mother has since moved in with another brother of the petitioner. The petitioner claims that a family feud led J.'s mother to accuse him of abusing J. The petitioner says he went to SRS to accuse the others of abusing J. after J.'s mother had threatened him that she was going to report him for abusing J. The petitioner did not, however, directly attack the credibility of J. herself--although he denies he molested her.

Two days before the scheduled hearing in this matter another SRS employee--an experienced investigator and supervisor--again interviewed J. She found J. bright and articulate. J. recalled the earlier investigation and repeated her allegations nearly identically to the manner in which she had reported them two years earlier.

ORDER

The Department's decision is affirmed. The petitioner's request to expunge the report of abuse is denied.

REASONS

The petitioner has made application for an order expunging the record of the alleged incident of child abuse from the SRS registry. This application is governed by 33 V.S.A. § 4916 which provides in pertinent part as follows:

- (a) The commissioner of social and rehabilitation services shall maintain a registry which shall contain written records of all investigations initiated under section 4915 of this Title unless the commissioner or the commissioner's designee determines after investigation that the reported facts are unsubstantiated, in which case, after notice to the person complained about, the records shall be destroyed unless the person complained about requests within one year that it not be destroyed.

. . .

- (h) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is unsubstantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under Section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall

not be expunged.

Pursuant to this statute, the department has the burden of establishing that a record containing a finding of child abuse should not be expunged. The department has the burden of demonstrating by a preponderance of the evidence introduced at the hearing not only that the report is based upon accurate and reliable information, but also that the information would lead a reasonable person to believe that a child has been abused or neglected. 33 V.S.A. § 4912(10) and Fair Hearings No. 10,136, 8646, and 8110.

"Sexual abuse" is specifically defined by 33 V.S.A. § 682 as follows:

(8) "Sexual abuse" consists of any act by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

Although the Department's evidence in this case was strictly hearsay, it is deemed to be both accurate and reliable.<sup>3</sup> Moreover, there is no question that the incident in question, as reported by J., constituted "sexual abuse" within the meaning of the above statute. The petitioner's denial that the incident occurred was not credible.

Inasmuch as the Department's decision "founding" the report in question meets the statutory criteria (supra), it

is affirmed. The petitioner's request to expunge the report is denied.

FOOTNOTES

<sup>1</sup>It appears the Department also founded abuse of J. by at least one of the other individuals named by the petitioner.

<sup>2</sup>The Department stated that it notified the petitioner by mail shortly after it founded the report. It appears, however, that the petitioner had recently moved out of state at that time.

<sup>3</sup>J. did not appear at the hearing and the Department did not introduce any contemporaneous memorialization of its interviews with her. Although the board has noted, in that the hearings are de novo, the Department runs a grave risk in relying solely on the hearsay testimony of its investigators (see e.g., Fair Hearing No. 10,136), in this case the evidence is found to be sufficient to carry the Department's burden under the statute.

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